

State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244A of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

(1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

(2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

Prima facie means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if un rebutted will establish a claim of eligibility under section 244A(c) of the Act.

Register means to properly file, with the district director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244A(b) of the Act.

State means any foreign country or part thereof as designated by the Attorney General pursuant to section 244A(b) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991]

§ 240.2 Eligibility.

Except as provided in §§ 240.3 and 240.4, an alien may in the discretion of the district director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a state designated under section 244A(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 240.3;

(e) Is not ineligible under § 240.4; and

(f)(1) Registers for Temporary Protected Status during the initial registration period; or

(2) Is or was in valid immigrant or nonimmigrant status during the registration period, and registers no later than 30 days from the expiration of such status during any subsequent period of redesignation, or by February 3, 1994, whichever date is later.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993]

§ 240.3 Applicability of grounds of inadmissibility.

(a) *Grounds of inadmissibility not to be applied.* Paragraphs (4), (5) (A) and (B), and (7)(A)(i) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.

(b) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability).

(c) *Grounds of inadmissibility that may not be waived.* The Service may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);

(2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security); or

(3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

[56 FR 619, Jan. 7, 1991, as amended at 58 FR 58937, Nov. 5, 1993]

§ 240.4 Ineligible aliens.

An alien is ineligible for Temporary Protected Status if the alien:

(a) Has been convicted of any felony or two or more misdemeanors, as defined in §240.1, committed in the United States, or

(b) Is an alien described in section 243(h)(2) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991]

§240.5 Temporary treatment benefits for eligible aliens.

(a) *Prior to the registration period.* Prior to the registration period established by the Attorney General, a national of a state designated by the Attorney General shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244A of the Act. This application may be filed without fee. Temporary treatment benefits, if granted, shall terminate unless the registration fee is paid or a waiver is sought within the first thirty days of the registration period designated by the Attorney General. If the registration fee is paid or a waiver is sought within such thirty day period, temporary treatment benefits shall continue until terminated under §240.13. The denial of temporary treatment benefits prior to the registration period designated by the Attorney General shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall continue until terminated under §240.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

[56 FR 619, May 22, 1991, as amended at 56 FR 23497, May 22, 1991]

§240.6 Application.

An application for Temporary Protected Status shall be made in accordance with §103.2 of this chapter except as provided herein. Each application must be filed with the fee as provided in §103.7 of this chapter, by each individual seeking Temporary Protected Status, except that the fee for Form I-765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization. Each application must consist of a completed Application for Temporary Protected Status (Form I-821), Application for Employment Authorization (Form I-765), two completed fingerprint cards (Form FD-258) for every applicant who is fourteen years of age or older, two identification photographs (1½"×1½"), and supporting evidence as provided in §240.9.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993]

§240.7 Filing the application.

(a) An application for Temporary Protected Status shall be filed with the district director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by the Attorney General, except in the case of an alien described in §240.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in §240.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the district director under §240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under §240.3(c) or 240.4. Eligibility for Temporary Protected Status in the latter instance shall be

decided by the Executive Office for Immigration Review during such proceedings.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993]

§ 240.8 Appearance.

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of the application, documents relating to the application, and the decision of the district director.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991]

§ 240.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

(i) Passport;

(ii) Birth certificate accompanied by photo identification; and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

(2) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any of the following:

(i) Employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal, State, or local income tax returns; letters from employer(s) or, if the applicant has been self employed, letters from banks, and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

(A) Alien's address(es) at the time of employment;

(B) Exact period(s) of employment;

(C) Period(s) of layoff; and

(D) Duties with the company.

(ii) Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing the dates during which the applicant received service;

(iii) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing name of school and period(s) of school attendance;

(iv) Hospital or medical records showing medical treatment or hospitalization of the applicant or his or her children, showing the name of the medical facility or physician as well as the date(s) of the treatment or hospitalization;

(v) Attestations by churches, unions, or other organizations of the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official whose title is also shown;

(C) Shows inclusive dates of membership;

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(D) States the address where applicant resided during the membership period;

(E) Includes the seal of the organization impressed on the letter or is on the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the attestor knows the applicant; and

(G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim, which may include:

(A) Money order receipts for money sent in or out of the country;

(B) Passport entries;

(C) Birth certificates of children born in the United States;

(D) Bank books with dated transactions;

(E) Correspondence between the applicant and other persons or organizations;

(F) Social Security card;

(G) Selective Service card;

(H) Automobile license receipts, title, vehicle registration, etc;

(I) Deeds, mortgages, contracts to which applicant has been a party;

(J) Tax receipts;

(K) Insurance policies, receipts, or letters; and/or

(L) Any other relevant document.

(3) *Evidence of eligibility under section 244A(c)(2) of the Act.* An applicant has the burden of showing that he or she is eligible for benefits under this part.

(4) *Evidence of valid immigrant or non-immigrant status.* In the case of an alien described in § 240.2(f)(2), Form I-551 or Form I-94 must be submitted by the applicant.

(b) *Sufficiency of evidence.* The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

(c) *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution.

Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993]

§ 240.10 Decision by the district director or Administrative Appeals Unit (AAU).

(a) *Temporary treatment benefits.* The district director shall grant temporary treatment benefits to the applicant if the applicant establishes *prima facie* eligibility for Temporary Protected Status in accordance with § 240.5.

(b) *Temporary Protected Status.* Upon review of the evidence presented, the district director may approve or deny the application for Temporary Protected Status in the exercise of discretion, consistent with the standards for eligibility in §§ 240.2, 240.3, and 240.4.

(c) *Denial by district director.* The decision of the district director to deny Temporary Protected Status, a waiver of grounds of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal a decision denying Temporary Protected Status. To exercise such right, the alien shall file a notice of appeal, Form I-290B, with the district director who issued the denial. If an appeal is filed, the administrative record shall be forwarded to the AAU for review and decision, pursuant to authority delegated in § 103.1(f)(2), except as otherwise provided in this section.

(1) If the basis for the denial of the Temporary Protected Status constitutes a ground for deportability or excludability which renders the alien ineligible for Temporary Protected Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s).

(2) If such a charging document is issued, the alien shall not have the right

to appeal the district director's decision denying Temporary Protected Status as provided in this subsection. The decision shall also apprise the alien of his or her right to a *de novo* determination of his or her eligibility for Temporary Protected Status in deportation or exclusion proceedings pursuant to §§ 240.11 and 240.18.

(d) *Decision by AAU.* The decision of the AAU shall be in writing served in person, or by mail to the alien's most recent address provided to the Service, and, if the appeal is dismissed, the decision shall state the reason(s) for the denial.

(1) If the appeal is dismissed by the AAU under § 240.18(b), the decision shall also apprise the alien of his or her right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings.

(2) If the appeal is dismissed by the AAU, the district director may issue a charging document if no charging document is presently filed with the Immigration Court.

(3) If a charging document has previously been filed or is pending before the Immigration Court, either party may move to recalendar the case after the decision by the AAU.

(e) *Grant of temporary treatment benefits.* (1) Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document. The alien shall be given, in English and in the language of the designated state or a language that the alien understands, a notice of the registration requirements for Temporary Protected Status and a notice of the following benefits:

(i) Temporary stay of deportation; and

(ii) Temporary employment authorization.

(2) Unless terminated under § 240.13, temporary treatment benefits shall remain in effect until a final decision has been made on the application for Temporary Protected Status.

(f) *Grant of temporary protected status.* (1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an alien registration document. For those aliens requesting employment authorization, the em-

ployment authorization document will act as alien registration.

(2) The alien shall be provided with a notice, in English and in the language of the designated state or a language that the alien understands, of the following benefits:

(i) The alien shall not be deported while maintaining Temporary Protected Status;

(ii) Employment authorization;

(iii) The privilege to travel abroad with the prior consent of the district director as provided in § 240.15;

(iv) For the purposes of adjustment of status under section 245 of the Act and change of status under section 248 of the Act, the alien is considered as being in, and maintaining, lawful status as a nonimmigrant while the alien maintains Temporary Protected Status.

(v) An alien eligible to apply for Temporary Protected Status under § 240.2(f)(2), who was prevented from filing a late application for registration because the regulations failed to provide him or her with this opportunity, will be considered to have been maintaining lawful status as a nonimmigrant until the benefit is granted.

(3) The benefits contained in the notice are the only benefits the alien is entitled to under Temporary Protected Status.

(4) Such notice shall also advise the alien of the following:

(i) The alien must remain eligible for Temporary Protected Status;

(ii) The alien must register annually with the District Office having jurisdiction over the alien's place of residence; and

(iii) The alien's failure to comply with paragraphs (f)(4) (i) or (ii) of this section will result in the withdrawal of Temporary Protected Status, including work authorization granted under this Program, and may result in the alien's deportation from the United States.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993; 60 FR 34090, June 30, 1995]

§ 240.11 Renewal of application; appeal to the Board of Immigration Appeals.

If a charging document is served on the alien with a notice of denial or

withdrawal of Temporary Protected Status, an alien may renew the application for Temporary Protected Status in deportation or exclusion proceedings. The decision of the immigration judge as to eligibility for Temporary Protected Status may be appealed to the Board of Immigration Appeals pursuant to § 3.3 of this chapter. The provisions of this section do not extend the benefits of Temporary Protected Status beyond the termination of a state's designation pursuant to § 240.19.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991]

§ 240.12 Employment authorization.

(a) Upon approval of an application for Temporary Protected Status, the INS shall grant an employment authorization document valid during the initial period of the state's designation (and any extensions of such period) or twelve (12) months, whichever is shorter.

(b) If the alien's Temporary Protected Status is withdrawn under § 240.14, employment authorization expires upon notice of withdrawal or on the date stated on the employment authorization document, whichever occurs later.

(c) If Temporary Protected Status is denied by the INS, employment authorization shall terminate upon notice of denial or at the expiration of the employment authorization document, whichever occurs later.

(d) If the application is renewed or appealed in deportation or exclusion proceedings, or appealed to the Administrative Appeals Unit pursuant to § 240.18(b), employment authorization will be extended during the pendency of the renewal and/or appeal.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991; 60 FR 21975, May 4, 1995]

§ 240.13 Termination of temporary treatment benefits.

(a) Temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for Temporary Protected Status.

(b) Temporary treatment benefits terminate, in any case, sixty (60) days after the date that notice is published

of the termination of a state's designation under section 244A(b)(3) of the Act.

§ 240.14 Withdrawal of Temporary Protected Status.

(a) *Authority of district director.* The district director may withdraw the status of an alien granted Temporary Protected Status under section 244A of the Act at any time upon the occurrence of any of the following:

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;

(2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 240.15;

(3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

(b) *Decision by district director.* (1) Withdrawal of an alien's status under paragraph (a) of this section shall be in writing and served by personal service pursuant to § 103.5(a) of this chapter. If the ground for withdrawal is § 240.14(a)(3), the notice shall provide that the alien has thirty (30) days within which to provide evidence of good cause for failure to register. If the alien fails to respond within thirty (30) days, Temporary Protected Status shall be withdrawn without further notice.

(2) Withdrawal of the alien's Temporary Protected Status under paragraph (b)(1) of this section may subject the applicant to exclusion or deportation proceedings under section 236 or section 242 of the Act as appropriate.

(3) If the basis for the withdrawal of Temporary Protected Status constitutes a ground of deportability or excludability which renders an alien ineligible for Temporary Protected

Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s) with notice of the right of a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings. If the basis for withdrawal does not constitute such a ground, the alien shall be given written notice of his or her right to appeal to the AAU. Upon receipt of an appeal, the administrative record will be forwarded to the AAU for review and decision pursuant to the authority delegated under § 103.1(f)(2). Temporary Protected Status benefits will be extended during the pendency of an appeal.

(c) *Decision by AAU.* If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 240.10(d).

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991]

§ 240.15 Travel abroad.

(a) After the grant of Temporary Protected Status, the alien must remain continuously physically present in the United States under the provisions of section 244A(c)(3)(B) of the Act. The grant of Temporary Protected Status shall not constitute permission to travel abroad. Permission to travel may be granted by the district director pursuant to the Service's advance parole provisions. There is no appeal from a denial of advance parole.

(b) Failure to obtain advance parole prior to the alien's departure from the United States may result in the withdrawal of Temporary Protected Status and/or the institution or recalendering of deportation or exclusion proceedings against the alien.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991]

§ 240.16 Confidentiality.

The information contained in the application and supporting documents submitted by an alien shall not be released in any form whatsoever to a

third party requester without a court order, or the written consent of the alien. For the purpose of this provision, a third party requester means any requester other than the alien, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for purposes of enforcement of the Act or in any criminal proceeding.

§ 240.17 Annual registration.

(a) Aliens granted Temporary Protected Status must register annually with the INS designated office having jurisdiction over their place of residence. Such registration will apply to nationals of those countries designated or redesignated for more than one year by the Attorney General pursuant to section 244A(b) of the Act. Registration may be accomplished by mailing or submitting in person, depending on the practice in place at the INS designated office, completed Forms I-821 and I-765 within the thirty (30) day period prior to the anniversary of the grant of Temporary Protected Status (inclusive of such anniversary date). Form I-821 will be filed without fee. Form I-765 will be filed with fee only if the alien is requesting employment authorization. Completing the block on the I-821 attesting to the continued maintenance of the conditions of eligibility will generally preclude the need for supporting documents or evidence. The Service, however, reserves the right to request additional information and/or documentation on a case-by-case basis.

(b) Unless the Service determines otherwise, registration by mail shall suffice to meet the alien's registration requirements. However, as part of the registration process, an alien will generally have to appear in person in order to secure a renewal of employment authorization unless the Service determines that employment authorization will be extended in another fashion due to operational need. The Service may also request that an alien appear in person as part of the registration process. In such cases, failure to appear without good cause shall be deemed a failure to register under this chapter.

(c) Failure to register without good cause will result in the withdrawal of the alien's Temporary Protected Status.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991; 60 FR 21975, May 4, 1995]

§ 240.18 Issuance of charging documents; detention.

(a) A charging document may be issued against an alien granted Temporary Protected Status on grounds of deportability or excludability which would have rendered the alien statutorily ineligible for such status pursuant to §§ 240.3(c) and 240.4. Aliens shall not be deported for a particular offense for which the Service has expressly granted a waiver. If the alien is deportable on a waivable ground, and no such waiver for the charged offense has been previously granted, then the alien may seek such a waiver in deportation or exclusion proceedings. The charging document shall constitute notice to the alien that his or her status in the United States is subject to withdrawal. A final order of deportation or exclusion against an alien granted Temporary Protected Status shall constitute a withdrawal of such status.

(b) The filing of the charging document by the Service with the Immigration Court renders inapplicable any other administrative, adjudication or review of eligibility for Temporary Protected Status. The alien shall have the right to a *de novo* determination of his or her eligibility for Temporary Protected Status in the deportation or exclusion proceedings. Review by the Board of Immigration Appeals shall be the exclusive administrative appellate review procedure. If an appeal is already pending before the Administrative Appeals Unit, the district director shall notify the Administrative Appeals Unit of the filing of the charging document, in which case the pending appeal shall be dismissed and the record of proceeding returned to the district where the charging document was filed.

(c) Upon denial of Temporary Protected Status by the Administrative Appeals Unit, the Administrative Appeals Unit shall immediately forward the record of proceeding to the district director having jurisdiction over the

alien's place of residence. The district director shall, as soon as practicable, file a charging document with the Immigration Court if the alien is then deportable or excludable under section 241(a) or section 212(a) of the Act, respectively.

(d) An alien who is determined by the Service to be deportable or excludable upon grounds which would have rendered the alien ineligible for such status as provided in §§ 240.3(c) and 240.4 may be detained under the provisions of this chapter pending deportation or exclusion proceedings. Such alien may be removed from the United States upon entry of a final order of deportation or exclusion.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23498, May 22, 1991; 60 FR 34090, June 30, 1995]

§ 240.19 Termination of designation.

Upon the termination of designation of a state, those nationals afforded temporary Protected Status shall, upon the sixtieth (60th) day after the date notice of termination is published in the FEDERAL REGISTER, or on the last day of the most recent extension of designation by the Attorney General, automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States. Such termination of a state's designation is not subject to appeal.

§ 240.20 Waiver of fees.

(a) Any of the fees prescribed in 8 CFR 103.7(b) which relate to applications to the district director or service center director for Temporary Protected Status may be waived if the applicant establishes that he or she is unable to pay the prescribed fee. The applicant will have established his or her inability to pay when the adjudicating officer concludes, on the basis of the requisite affidavit and of any other information submitted, that it is more probable than not that:

(1) The applicant's gross income from all sources for the three-month period prior to the filing of the fee waiver request, including income received or earned by any dependent in the United States, was equalled or exceeded by essential expenditures for such three-month period; and

(2) The applicant does not own, possess, or control assets sufficient to pay the fee without substantial hardship.

(b) For purposes of this section, essential expenditures are limited to reasonable expenditures for rent, utilities, food, transportation to and from employment, and any essential extraordinary expenditures, such as essential medical expenses, or expenses for clothing, laundry, and child care, to the extent that the applicant can show that those expenditures made during the three-month period prior to the filing of the fee waiver request were reasonable and essential to his or her physical well-being or to earning a livelihood.

(c) For purposes of this section, the TPS registration fee (including the fee for employment authorization, if applicable) shall be considered an essential expenditure. A fee waiver will be granted if the sum of the fees for TPS registration and employment authorization equals or exceeds income and assets that remain after deducting other essential expenditures.

(d) If an adjudicating officer is satisfied that an applicant has established inability to pay, he or she shall not deny a fee waiver due to the cost of administering the TPS program.

(e) For purposes of this section, the following documentation shall be required:

(1) The applicant seeking a fee waiver must submit an affidavit, under penalty of perjury, setting forth information to establish that he or she satisfies the requirements of this section. The affidavit shall individually list:

(i) The applicant's monthly gross income from each source for each of the three months prior to the filing of the fee waiver request;

(ii) All assets owned, possessed, or controlled by the applicant or by his or her dependents;

(iii) The applicant's essential monthly expenditures, itemized for each of the three months prior to the filing of the fee waiver request, including essential extraordinary expenditures; and

(iv) The applicant's dependents in the United States, his or her relationship to those dependents, the dependents' ages, any income earned or received by those dependents, and the street ad-

dress of each dependent's place of residence.

(2) The applicant may also submit other documentation tending to substantiate his or her inability to pay.

(f) If the adjudicating officer concludes based upon the totality of their circumstances that the information presented in the affidavit and in any other additional documentation is inaccurate or insufficient, the adjudicating officer may require that the applicant submit the following additional documents prior to the adjudication of a fee waiver:

(1) The applicant's employment records, pay stubs, W-2 forms, letter(s) from employer(s), and proof of filing of a local, state, or federal income tax return. The same documents may also be required from the applicant's dependents in the United States.

(2) The applicant's rent receipts, bills for essential utilities (for example, gas, electricity, telephone, water), food, medical expenses, and receipts for other essential expenditures.

(3) Documentation to show all assets owned, possessed, or controlled by the applicant or by dependents of the applicant.

(4) Evidence of the applicant's living arrangements in the United States (living with relative, living in his or her own house or apartment, etc.), and evidence of whether his or her spouse, children, or other dependents are residing in his or her household in the United States.

(5) Evidence of the applicant's essential extraordinary expenditures or those of his or her dependents residing in the United States.

(g) The adjudicating officer must consider the totality of the information submitted in each case before requiring additional information or rendering a final decision.

(h) All documents submitted by the applicant or required by the adjudicating officer in support of a fee waiver request are subject to verification by the Service.

(i) In requiring additional information, the adjudicating officer should consider that some applicants may have little or no documentation to substantiate their claims. An adjudicating officer may accept other evidence, such

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as an affidavit from a member of the community of good moral character, but only if the applicant provides an affidavit stating that more direct documentary evidence is unavailable.

[57 FR 34507, Aug. 5, 1992]

§§ 240.21—240.39 [Reserved]

PART 241—CONTROLLED SUBSTANCE VIOLATIONS

AUTHORITY: 8 U.S.C. 1103, 1251, 1252, 1357; 8 CFR part 2.

§ 241.1 Controlled substance convictions.

In determining the deportability of an alien who has been convicted of a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, the term *controlled substance* as used in section 241(a)(2)(B)(i) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, and shall include any substance contained in Schedules I through V of 21 CFR 1308.1, *et seq.* For the purposes of this section, the term *controlled substance* includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

[53 FR 9282, Mar. 22, 1988. Redesignated at 56 FR 8906, Mar. 4, 1991, and amended at 56 FR 38333, Aug. 13, 1991]

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

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AUTHORITY: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an order to show cause with the Office of the Immigration Judge, except for an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States. In the proceeding, the alien shall be known as the respondent. Orders to show cause may be issued by:

- (1) District directors (except foreign);
- (2) Deputy district directors (except foreign);
- (3) Assistant district directors for investigations;
- (4) Deputy assistant district directors for investigations;
- (5) Assistant district directors for deportation;
- (6) Deputy assistant district directors for deportation;
- (7) Assistant district directors for examinations;
- (8) Deputy assistant district directors for examinations;
- (9) Officers in charge (except foreign);
- (10) Assistant officers in charge (except foreign);
- (11) Chief patrol agents;
- (12) Deputy chief patrol agents;
- (13) Associate chief patrol agents;
- (14) Assistant chief patrol agents;